

REMARKS

This amendment is offered in response to the Office Action of June 18, 2003.

In response to the rejection of the specification under 37 C.F.R. §1.71 and the rejection of the claims under 35 U.S.C. §112, first and second paragraphs, the Applicant has further amended Claim 6 to recite “the closure elements of said reclosable zipper being in an interlocked configuration prior to said step of inserting said slider” (underlined language added). This language is intended to effect alternative (a) recited in the first paragraph of numbered page 2 of the Office Action, namely, “the amendments reciting the state of the bag during insertion of the slider”. It is respectfully submitted that this language is fully supported by page 6, lines 9-11 of the specification.

It is respectfully submitted that this resolves any ambiguity of language noted in the Office Action of June 18, 2003.

In the Office Action, claims 6-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 09/915,179. The Applicant will consider filing a terminal disclaimer, if necessary, in the event that the application is otherwise in condition for allowance.

Claims 6-8 were rejected under 35 U.S.C. §103 as being obvious over the Herz reference (U.S. Patent No. 3,790,992). Similarly, Claims 6-8 were rejected under 35 U.S.C. §103 as being obvious over the Herz reference in view of the Machacek reference (U.S. Patent No. 6,047,450) or the Richardson reference (U.S. Patent No. 5,442,838) or the Herrington reference (U.S. Patent No. 5,067,208) or, alternatively, the Machacek reference or Richardson reference or Herrington reference in view of the Herz reference.

Similarly, Claims 6-8 were rejected under 35 U.S.C. §103 as being obvious over the Herz reference in view of the Machacek reference or Richardson reference or Herrington reference and further in view of the Thomas reference (U.S. Patent No. 5,788,378) or, in the alternative, the Machacek reference or Richardson reference or Herrington reference in view of the Herz reference and further in view of the Thomas reference.

In response, claim 6 is amended herein to clarify that “the closure elements of said reclosable zipper being in an interlocked configuration prior to said step of inserting said slider” (added language underlined). The Applicant respectfully but strenuously traverses the various statements of the Examiner -- “Furthermore, slider application to completed packages is well known in the art.”; “The timing of the filling operation is not critical and it would have been obvious to one of ordinary skill in the art to fill the bags either before or after the application of the slider”; and “It would have been obvious to one skilled in the art to place the product of the basic references in the bag prior to placing the slider over the zipper as shown by Thomas to avoid contact of the product with the slider.”

It is respectfully submitted that the Herz reference discloses the manufacture of an unfilled bag, where the bag is later filled, perhaps manually by the consumer. Herz never contemplated filling the bag on a form fill and seal machine. Herz is directed at a slider bag with an end seal and, as such, has nothing to do with form fill and seal. The bag of the Herz reference was designed to be filled later by the consumer and was not intended or designed to be made on automatic form fill and seal machinery. There is no provision in the Herz reference for producing a form fill and seal bag, which, to fill the bag, would have required automatic opening and closing of the zipper by using the slider.

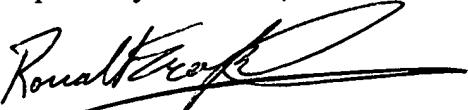
While the Thomas reference discloses filling the bag in that "the top seal can be completed in a post-filling operation" (col. 6, lines 1 and 2), there is nothing to disclose or suggest the claimed "said reclosable zipper being in an interlocked configuration prior to said step of inserting said slider and remaining in said interlocked configuration during said step of inserting said slider".

The remaining cited references appear to disclose specific zipper and slider configurations, but teach nothing to resolve the differences between the presently claimed invention and the cited Herz reference.

It is therefore respectfully submitted that Claims 6-8 are in immediate condition for allowance.

For all of the reasons above, it is respectfully submitted that the presently pending claims are in immediate condition for allowance. The Examiner is respectfully requested to withdraw his rejections of the claims, to allow the claims, and to pass this application to early issue.

Respectfully submitted,



Gerald Levy  
Registration No. 24,419

Ronald E. Brown  
Registration No. 32,200

Pitney, Hardin, Kipp & Szuch, L.L.P.  
685 Third Avenue  
New York, New York 10017  
212-297-5800